

REPORT - PLANNING COMMISSION MEETING
August 11, 2005

Project Name and Number: Stormwater Quality Management GPA / ZTA (PLN2006-00006)

Applicant: City of Fremont

Proposal: To consider a General Plan Amendment (GPA) and Zoning Text Amendment (ZTA) to respond to current National Pollutant Discharge Elimination System (NPDES) permit requirements specifically pertaining to site design considerations, source control best management practices, and post-construction stormwater treatment controls.

Recommended Action: Recommend General Plan Amendment and Zoning Text Amendment to the City Council.

Location: City-wide

Agent of Applicant: City of Fremont

Environmental Review: This project is exempt from CEQA under Section 15308 actions by regulatory agencies for the protection of the environment.

Existing General Plan: Natural Resources sections of the General Plan are proposed to be modified.

Existing Zoning: Chapter 11 (Storm Water Management and Discharge Control) of Title VIII (Planning and Zoning) of the Fremont Municipal Code specifically Section 8-11205 and Section 8-11206 of Article 2 (Discharge Regulations and Requirements) are proposed to be modified.

Existing Land Use: N/A

Public Hearing Notice: Public hearing notification is applicable. A Display Ad and Public Hearing Notice were delivered to The Argus on July 22, 2005 to be published by July 28, 2005.

Executive Summary: In 1987 Congress began to address urban run-off pollution by requiring municipal agencies to obtain National Pollutant Discharge Elimination System (NPDES) permits to manage stormwater runoff. In Alameda County, a single NPDES permit is issued to the public agencies within Alameda County, which collaborate together with the Alameda Countywide Clean Water Program (ACCWP), a consortium of 17 member agencies, including the City of Fremont. Each agency within the ACCWP is responsible for enforcing the NPDES permit requirements within its respective jurisdiction.

Recently, new enhanced performance standards have been issued. The NPDES permit subsection requires that member agencies review their development design standards and adopt and fully implement the changes by November 15, 2005. The proposed amendments incorporate the new requirements for site design considerations, source control best management practices, and post-construction stormwater treatment controls.

Background: In February 2003, the San Francisco Bay Regional Water Quality Control Board (RWQCB) issued the third 5-year NPDES permit to the ACCWP. The reissued NPDES permit includes enhanced performance standards for new and redevelopment projects (Provision C.3 of the NPDES permit). Findings cited in the NPDES permit in support of Provision C.3. include the following:

- ❑ Urban development increases pollutant load, volume, and velocity of runoff. During urban development two important changes occur. Natural vegetated pervious ground cover is converted to impervious surfaces such as paved streets, rooftops, and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. Because pavement and concrete can neither absorb water nor remove pollutants, the natural purification characteristics of the land are lost.

- ❑ Urban development creates new pollution sources as human population density increases and brings with it proportionately higher levels of car emissions, car maintenance wastes, pesticides, household hazardous wastes, trash, etc., which can be washed into the storm drain system. As a result of these two changes, the runoff leaving the developed urban area is greater in volume, velocity and pollutant load than the predevelopment runoff from the same area.
- ❑ The pollutants found in urban runoff can have damaging effects on both human health and aquatic ecosystems. In addition, the increased flows and volumes of stormwater discharged from new impervious surfaces resulting from new development and redevelopment can significantly impact beneficial uses of aquatic ecosystems due to physical modifications of watercourses, such as bank erosion and widening of channels.
- ❑ Water quality degradation increases with percent imperviousness. The increased volume and velocity of runoff from developed urban areas can greatly accelerate the erosion of downstream natural channels. A number of studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of beneficial uses of downstream receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as a 10% conversion from natural to impervious surfaces.

The RWQCB considers that because land use planning is where urban development begins, it is the phase in which the greatest and most cost-effective opportunities to protect water quality in new development and redevelopment exist. The RWQCB believes that when a municipality incorporates policies and principles designed to safeguard water resources in its General Plan and development project approval processes, it has taken steps towards the preservation of local water resources.

Provision C.3 was incorporated into the NPDES permit with the assumption that municipalities are responsible for considering potential stormwater impacts when making planning and land use decisions. The goal of the requirements is to address pollutant discharges and changes in runoff flows from new development and significant redevelopment projects, through implementation of post-construction stormwater treatment measures, source control, and site design measures, to the maximum extent practicable. The proposed General Plan Amendments and Zoning Text Amendments were developed to address these performance standards for the enhanced C.3 provision.

Project Description & Analysis:

General Plan Text Amendments: Chapter 9 of the General Plan addresses Natural Resource issues in Fremont. It is within this chapter that the proposed changes to address the NPDES Permit Provision C.3 requirements are proposed to be made. Specifically, language has been added to clarify the role of the ACCWP and the San Francisco Bay Conservation and Development Commission (BCDC) and to delineate the responsibility of Fremont to uphold the requirements of the Permit. Policy NR 8.4.1 enumerates the six steps that the City agrees to implement. The following is a section-by-section review of the General Plan text proposed for revision. The new text is underlined and the text to be deleted has been ~~struck~~. A brief analysis follows each section:

Section 1:

Chapter 9 of the Fremont General Plan under the "Water Resources" heading and "Setting – Regulatory Environment" subheading is proposed to be amended to include a new agency which reads as follows:

~~Because~~ Due to a variety of uses and impacts, and because of its importance to development, a complex web of laws and agencies has grown over time to control and manage water resources. Agencies with significant responsibility for some aspect of water planning are briefly described below:

- The San Francisco Bay Regional Water Quality Control Board (RWQCB) is the agency designated by the State of California to protect water quality of all water resources in the San Francisco Bay Area.
- The **United States Army Corps of Engineers (USACE)** is a Federal agency with permit authority over any filling of a waterway or wetlands.

- The **California Department of Fish and Game (CDFG)** is a State agency with permit authority for any modification of a waterway (such as a bridge). Its primary concern is fish and wildlife habitat.
- The **Alameda County Flood Control and Water Conservation District (ACFCWCD)** is a County Agency responsible for flood control throughout Fremont. It owns and/or manages several waterways, ponds, Lake Elizabeth and flood control ~~ditches and culverts~~ channels.
- The **Alameda County Water District (ACWD)** provides potable water service for the Tri-City area (Newark, Union City, Fremont). It is responsible for managing Alameda Creek water resources, the Niles Cone Aquifer and treatment of water for urban uses.
- The **San Francisco Water Department (SFWD)** controls most of the water resources of the Sunol Valley and is concerned with development of the watershed surrounding the Sunol Valley. It also provides ACWD much of the City's drinking water.
- The 27-member **San Francisco Bay Conservation and Development Commission (BCDC)** is made up of appointees from Federal, state, and local governments. The BCDC regulates new development within the first 100 feet inland from the Bay to ensure that maximum feasible public access to the Bay is provided and implements the Coastal Zone Management Act within the San Francisco Bay segment of the California Coast.
- The **Alameda Countywide Clean Water Program (ACCWP)** is a consortium of seventeen local agencies within Alameda County that share a joint National Pollutant Discharge Elimination System Permit (NPDES Permit), issued by the RWQCB.

Staff Analysis: As mentioned above, Fremont is part of the Alameda Countrywide Clean Water Program along with 13 other cities in Alameda County, together with Alameda County, the Alameda County Flood Control and Water Conservation District, and the Zone 7 Water Agency.¹ The ACCWP, formed in 1991, coordinates regulation, monitoring and outreach measures aimed at reducing pollutants in stormwater runoff and improving the water quality of Alameda County's creeks and the San Francisco Bay. Staff is recommending that this language be added in order to sufficiently update the General Plan to describe current regulatory agencies.

Section 2:

Chapter 9 of the Fremont General Plan under the Water Resources heading and "Setting – Surface Water" subheading is proposed to be amended to read as follows:

Surface Water

Surface water includes streams, drainage channels, ponds, lakes and other water on the surface of the land. Rainfall is the source of most surface water in Fremont. Rainfall occurs during a short season in relatively intense storms. The amount of water flowing on the surface depends on how much water soaks into the ground, which in turn is dependent on the characteristics of the soil and on the amount of land made impermeable by development (roads, roofs, parking lots, etc.). These impervious surface areas, generally associated with urbanization, prevent water from infiltrating into the soil, thereby creating urban runoff, which can become polluted as it flows over urbanized areas. This untreated runoff typically enters a storm drain system and is conveyed to local waterways and eventually to the San Francisco Bay. Most of the water not soaked into the ground flows through the City's creeks and drainage channels into the Bay. Some water is stored in lakes and ponds. There are no opportunities in the Fremont Planning Area to harness the hydraulic force of water.

Staff Analysis: Staff recommends that this section be modified to include language that better describes the cause and effect relationship between surface water and the storm drain system.

Section 3:

¹ The member agencies include: Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, Alameda County, Alameda County Water Conservation and Flood Control District, and the Zone 7 Water Agency.

Chapter 9 of the Fremont General Plan under the Water Resources heading and “Projections – Bay” subheading is proposed to be amended to read as follows:

Bay

Fremont contributes relatively little to Bay water quality issues in the ~~South~~ San Francisco Bay. As development continues in Fremont, it will be important to continue to address the problem of urban run-off and to seek to minimize urban pollutants entering the Bay. Of particular importance will be plans to encourage pollution prevention measures and low-impact development designs to help maintain and improve local water quality. Additionally, focus should be given to possible spillage of toxic materials in the industrial area, and especially west of I-880. Such spills have the potential to ~~enter~~ directly enter into the Bay through various creeks and sloughs if necessary protective measures are not instituted.

In 1987 Congress began to address urban runoff pollution by requiring municipal agencies to obtain National Pollutant Discharge Elimination System (NPDES) permits to manage stormwater runoff. In Alameda County, a single NPDES permit is issued to the agencies within the county, which collaborate together as the Alameda Countywide Clean Water Program (ACCWP), a consortium of 17 member agencies including the City of Fremont. Each agency within the ACCWP is responsible for enforcing the NPDES permit requirements within its respective jurisdiction. The NPDES permit calls for member agencies to require specific stormwater pollution prevention practices, including a requirement on development projects to incorporate Best Management Practices (BMPs) during construction and to reduce long term water quality impacts by using site design, source control and stormwater treatment measures to help keep pollutants out of stormwater.

~~The 1986 Water Quality Control Plan for the San Francisco Bay Basin, adopted by the Regional Water Quality Control Board in implementation of the Federal Clean Water Act, requires the development and implementation of a Study Plan to address the impacts of storm water runoff on the water quality of the Bay. The Regional Water Quality Control Board has required that Alameda County, cities in the County, and Alameda County Flood Control and Water Conservation District jointly apply for a National Pollutant Discharge Elimination (NPDES) permit.~~

~~Under a joint agreement, Alameda County and associated cities are monitoring water quality at 16 representative outfall locations, and estimates of the type and amount of sediments and pollutants are being made. The next step will be to develop control measures to mitigate or reduce nonpoint sources of pollutants. The County and cities are currently (January 1991) drafting a joint agreement to implement the Alameda County Urban Runoff Clean Water Program.~~

Staff Analysis: Staff is recommending language that specifically updates the General Plan with current National Pollutant Discharge Elimination System (NPDES) requirements passed by Congress in 1987. This section also describes the role of the ACCWP and generally illustrates stormwater pollution prevention practices.

Section 4:

Chapter 9 of the Fremont General Plan under the Natural Resources (NR) Goal 8: High Quality Water is proposed to be amended to read as follows:

OBJECTIVE NR 8.4: Protection of local ~~San Francisco Bay~~ water quality

Policy NR 8.4.1: ~~Support the Alameda County Urban Runoff Clean Water Program.~~

~~Implementation 1: Develop and implement control and mitigation measures consistent with the Agreement to Implement the Alameda County Urban Runoff Clean Water Program.~~

Policy NR 8.4.1: Enforce Federal, state and locally issued mandates regarding water quality such as the National Pollutant Discharge Elimination System (NPDES) permit requirements.

- Implementation 1: Support the Alameda Countywide Clean Water Program and continue to implement a municipal stormwater clean water program to reduce stormwater pollutants according to NPDES permit mandates.
- Implementation 2: Require development projects to incorporate stormwater treatment measures, site design techniques and source controls to prevent increases in stormwater pollutants and control discharge of stormwater runoff to local waterways.
- Implementation 3: Minimize stormwater flow and volume impacts on local waterways by reducing impervious surface area and incorporating stormwater treatment controls at development sites.
- Implementation 4: Preserve and where possible create or restore areas that provide important water quality benefits and areas that may be adversely impacted by increased development, such as creeks, riparian corridors, wetlands, and buffer zones.
- Implementation 5: Establish additional development guidelines as needed to protect areas that are particularly susceptible to erosion or other factors that would pose significant impacts to local waterways.
- Implementation 6: Encourage the consideration of pest-resistant and drought-tolerant landscaping and design features, and the incorporation of stormwater detention and retention techniques in the landscaping design of proposed development and redevelopment projects.

Staff Analysis: Staff is recommending a modification to the Natural Resources objective 8.4 to broaden the scope of protection of water quality by not specifying local water quality as being linked only to the San Francisco Bay. Policy Natural Resource 8.4.1 also strengthens the levels of review by including the NPDES permit as an enforcement tool. The six-implementation tools recommended by staff enforce the elements that address the reduction of adverse stormwater flow and volume impacts, stormwater treatment controls, source controls, erosion, pest-resistant landscaping, and stormwater detention and retention techniques.

Zoning Text Amendments: This project proposes adding a section to the Fremont Municipal Code to address the development design requirements for the Provision C.3 of the NPDES permit. This section, 8-11206, specifies that new development and in-fill redevelopment projects shall incorporate stormwater treatment measures and site design techniques to minimize stormwater runoff pollution. The following is a section-by-section review of the zoning text proposed for revision. The new text is underlined and the text to be deleted has been ~~struck~~. Minor changes that pertain to the numbering system are not described below but are shown in Exhibit "B". A brief analysis follows each section:

Section 1:

Section 8-11205 Reductions of pollutants in storm water, specifically sections (c), (d), and (e) of Article 2 (Discharge Regulations and Requirements) of Chapter 11 (Storm Water Management and Discharge Control), Title VII (Planning and Zoning) of the Fremont Municipal Code, is amended to read as follows:

Any person engaged in activities which may result in pollutants entering the city storm drain system shall undertake all practicable measures to reduce such pollutants. Examples of such activities include ownership and use of facilities which may be a source of pollutants such as parking lots, gasoline stations, industrial facilities, commercial facilities, stores fronting city streets, etc. The following minimal requirements shall apply:

~~(c) Best management practices for new developments and redevelopments; city manager regulations. Any construction contractor performing work in the city shall endeavor, whenever possible, to provide permissible manual or other accepted local erosion control measures at the catch basin to retain any debris and dirt flowing into the city's storm drain system. The city manager may adopt regulations establishing controls on the volume and rate of storm water runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants.~~

~~(d) (c) Notification of intent and compliance with general permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general storm water permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, San Francisco Bay Regional Water Quality Control Board shall provide notice of intent, comply with, and undertake all other activities required by any general storm water permit applicable to such discharges. Each discharger identified in an individual NPDES permit relating to storm water discharges shall comply with and undertake all activities required by such permit.~~

~~(e) (d) Compliance with best management practices. Where best management practices guidelines or requirements have been adopted by any Federal, State of California, regional, and/or City of Fremont governments, for any activity, operation, or facility which may cause or contribute to storm water pollution or contamination, illicit discharges, and/or discharge of non-storm water to the storm water system, every person undertaking such activity or operation, or owning or operating such facility, shall comply with such guidelines or requirements as may be prescribed by the city manager. (Ord. No. 2012, 6-16-92.)~~

Staff Analysis: Staff recommends that this section regarding Best Management Practices (BMP's) be removed from this section and added to the newly created section described below in order to provide a comprehensive section that describes stormwater treatment measures and site design techniques that would assist in proper development design as it pertains to stormwater runoff pollution.

Section 2: Section 8-11206 is proposed to describe a new topic named 'Development Design Requirements'. Consequently, the existing Section 8-11206 'Watercourse' is proposed to be numbered as Section 8-11207 (no changes are proposed for the existing Watercourse section except for the section number). The new Section 8-11206 will read as follows:

Sec 8-11206 Development Design Requirements

New and in-fill redevelopment projects shall incorporate stormwater treatment measures and site design techniques to minimize stormwater runoff pollution. New and in-fill redevelopment projects shall conform to the following:

- (a) Best Management Practices (BMP's) for new developments and in-fill redevelopment projects: Any construction contractor performing work in the city shall implement erosion control measures onsite to retain all debris, dirt and pollutants, and prevent said pollutants from flowing into the city's storm drain system. The city manager or designee may adopt regulations establishing controls on the volume and rate of storm water runoff from new developments and in-fill redevelopment projects as appropriate to minimize the discharge of pollutants.
- (b) Impervious areas. Parking lots and other impervious areas shall be designed to drain stormwater runoff to vegetated draining swales, filter strips, landscaping or other approved treatment devices prior to the discharge into the storm drain systems.
- (c) Operation and Maintenance Agreements. All projects incorporating post-construction stormwater treatment controls (e.g. vegetated swales, filter strips, detention ponds etc.) shall develop, execute and record an operation

and maintenance plan for each type of control measures or devices that outlines specific maintenance activities, including vector control, required for optimal performance of said post-construction stormwater treatment control. The Operation and Maintenance Agreement is a legal document and is recorded on the title of the property. Responsibility for the Operation and Maintenance Agreement shall be legally transferred to all subsequent property owners.

- (d) Pedestrian Networks. The use of alternative materials for on-site walkways such as pervious concrete, decomposed granite etc. rather than conventional concrete walkways shall be encouraged for pedestrian networks.
- (e) Rooftop runoff. Runoff areas shall drain through disconnected roof leaders and/or front yard bubblers that discharge to landscaped, vegetated or other runoff treatment areas and are properly located to prevent erosion of landscaped materials.
- (f) Surfacing. Off-street parking, loading and driveway areas shall be paved with asphalt, Portland cement, or permeable material, and except for single-family and two-family developments on individual lots, shall be bounded by concrete curb six inches in height. The area shall be graded and drained to dispose of all surface water accumulated within the area. Guidance regarding to where surface water shall drain may be found in the City of Fremont Urban Runoff Standard Conditions of Approval. Directly connected impervious surfaces shall be minimized.
- (g) Hydrograph Modification Management Plan (HMP) – Post construction flow shall not exceed pre-development discharge, as required by the NPDES permit and to the extent practicable.
- (h) Stenciling: All storm drain inlets are to be stenciled "No Dumping - Drains to Bay" using thermoplastic stencils purchased from the City of Fremont Maintenance Division. Alternative inlet stencils or marking may be permitted, subject to City Engineer approval during plan check review.

Staff Analysis: A new section is being proposed to provide the tools – specific storm water treatment measures and site design guidelines – in order to comply to provision C.3 of the NPDES permit to address the control of stormwater impacts associated with new development and significant in-fill redevelopment projects. This section provides a broad spectrum of measures from the use of materials that should be used for sidewalks, parking, loading and driveway as well as how one would deal with rooftop runoff. Additionally, ACCWP member agencies are required to develop and implement a program that requires verification of the proper operation and maintenance (O&M) of the stormwater treatment controls during the life of the projects. The proposed Zoning Text Amendment described above under section (c) 'Operations and Maintenance Agreements' will help Fremont comply with the NPDES permit requirements that specify that treatment controls be operated and maintained after construction of the project by the property owner.

General Plan Conformance: The proposed amendments incorporate the new requirements for site design considerations, source control best management practices, and post-construction stormwater treatment controls. The recommended modification to the Zoning Text and General Plan is consistent with the General Plan as follows:

Fundamental Goals of the City of Fremont's General Plan:

- F-2 A harmonious blend of the natural and built environments.
- F-7 An open space frame that includes the hillface, bay, wetlands and gateways.
- F-14 A prominent leadership role in regional forums and in addressing the regional issues that affect Fremont.

Natural Resources Goals:

- Goal 7: Development sensitive to surface water resources
- Goal 8: High Quality Water

Staff Analysis: Staff is recommending modifications to specific sections of the Zoning Code and General Plan to conform to existing NPDES permit requirements, while strengthening existing Fundamental and Natural Resources goals.

Environmental Analysis: This project is exempt from CEQA under Section 15308 actions by regulatory agencies for the protection of the environment.

Response from Agencies and Organizations: No comments have been received from any agency or organization regarding this proposal.

Enclosures: Exhibit "A" General Plan Amendment
 Exhibit "B" Zoning Text Amendment

Exhibits: Exhibit "A" General Plan Amendment
 Exhibit "B" Zoning Text Amendment

Recommended Actions:

1. Hold public hearing.
2. Find PLN2006-00006 is categorically exempt from CEQA per section 15308 actions by regulatory agencies for the protection of the environment.
3. Recommend that the City Council find that PLN2006-00006 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Fundamental and Natural Resources Chapters as enumerated within the staff report.
4. Recommend that the City Council find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment and General Plan Amendment PLN2006-00006 because the proposed text changes are needed to respond to current National Pollutant Discharge Elimination System (NPDES) permit requirements specifically pertaining to site design considerations, source control best management practices, and post-construction stormwater treatment controls.
5. Recommend PLN2006-00006 to the City Council in conformance with Exhibit "A" (General Plan Amendment) and Exhibit "B" (Zoning Text Amendment).

EXHIBIT "A"
PLN2006-00006
STORMWATER QUALITY MANAGEMENT
General Plan Amendment

Note: Under PROPOSED ORDINANCE, new language proposed to be added is underlined. Language proposed to be removed is ~~struck~~.

Section 1:

Chapter 9 of the Fremont General Plan under the "Water Resources" heading and "Setting – Regulatory Environment" subheading is proposed to be amended to include a new agency which reads as follows:

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etc.). These impervious surface areas, generally associated with urbanization, prevent water from infiltrating into the soil, thereby creating urban runoff, which can become polluted as it flows over urbanized areas. This untreated runoff typically enters a storm drain system and is conveyed to local waterways and eventually to the San Francisco Bay. Most of the water not soaked into the ground flows through the City's creeks and drainage channels into the Bay. Some water is stored in lakes and ponds. There are no opportunities in the Fremont Planning Area to harness the hydraulic force of water.

Section 3:

Chapter 9 of the Fremont General Plan under the Water Resources heading and "Projections – Bay" subheading is proposed to be amended to read as follows:

Bay

Fremont contributes relatively little to Bay water quality issues in the ~~South~~ San Francisco Bay. As development continues in Fremont, it will be important to continue to address the problem of urban run-off and to seek to minimize urban pollutants entering the Bay. Of particular importance will be plans to address encourage pollution prevention measures and low-impact development designs to help maintain and improve local water quality. Additionally, focus should be given to possible spillage of toxic materials in the industrial area, and especially west of I-880. Such spills have the potential to ~~enter~~ directly enter into the Bay through various creeks and sloughs if necessary protective measures are not instituted.

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~~The 1986 Water Quality Control Plan for the San Francisco Bay Basin, adopted by the Regional Water Quality Control Board in implementation of the Federal Clean Water Act, requires the development and implementation of a Study Plan to address the impacts of storm water runoff on the water quality of the Bay. The Regional Water Quality Control Board has required that Alameda County, cities in the County, and Alameda County Flood Control and Water Conservation District jointly apply for a National Pollutant Discharge Elimination (NPDES) permit.~~

~~Under a joint agreement, Alameda County and associated cities are monitoring water quality at 16 representative outfall locations, and estimates of the type and amount of sediments and pollutants are being made. The next step will be to develop control measures to mitigate or reduce nonpoint sources of pollutants. The County and cities are currently (January 1991) drafting a joint agreement to implement the Alameda County Urban Runoff Clean Water Program.~~

Section 4:

Chapter 9 of the Fremont General Plan under the Natural Resources (NR) Goal 8: High Quality Water is proposed to be amended to read as follows:

~~OBJECTIVE NR 8.4: Protection of local San Francisco Bay water quality~~

~~Policy NR 8.4.1: Support the Alameda County Urban Runoff Clean Water Program.~~

~~Implementation 1: Develop and implement control and mitigation measures consistent with the Agreement to Implement the Alameda County Urban Runoff Clean Water Program.~~

- Policy NR 8.4.1: Enforce Federal, state and locally issued mandates regarding water quality such as the National Pollutant Discharge Elimination System (NPDES) permit requirements.
- Implementation 1: Support the Alameda Countywide Clean Water Program and continue to implement a municipal stormwater clean water program to reduce stormwater pollutants according to NPDES permit mandates.
- Implementation 2: Require development projects to incorporate stormwater treatment measures, site design techniques and source controls to prevent increases in stormwater pollutants and control discharge of stormwater runoff to local waterways.
- Implementation 3: Minimize stormwater flow and volume impacts on local waterways by reducing impervious surface area and incorporating stormwater treatment controls at development sites.
- Implementation 4: Preserve and where possible create or restore areas that provide important water quality benefits and areas that may be adversely impacted by increased development, such as creeks, riparian corridors, wetlands, and buffer zones.
- Implementation 5: Establish additional development guidelines as needed to protect areas that are particularly susceptible to erosion or other factors that would pose significant impacts to local waterways.
- Implementation 6: Encourage the consideration of pest-resistant and drought-tolerant landscaping and design features, and the incorporation of stormwater detention and retention techniques in the landscaping design of proposed development and redevelopment projects.

EXHIBIT "B"
PLN2006-00006
STORMWATER QUALITY MANAGEMENT
Zoning Text Amendment

Note: Under PROPOSED ORDINANCE, new language proposed to be added is underlined. Language proposed to be removed is ~~struck~~.

CHAPTER 11. STORM WATER MANAGEMENT AND DISCHARGE CONTROL

Article. 1. Title, Purpose and General Provisions, §§ 8-11100--8-11104

Article. 2. Discharge Regulations and Requirements, §§ 8-11200--8-11206

Article. 3. Inspection and Enforcement, §§ 8-11301--8-11332

Article. 4. Coordination with Other Programs, §§ 8-11400--8-11402

ARTICLE 1. TITLE, PURPOSE AND GENERAL PROVISIONS

§ 8-11100. Title.

§ 8-11101. Purpose and intent.

§ 8-11102. Definitions.

§ 8-11103. Responsibility for administration.

§ 8-11104. Taking.

Sec. 8-11100. Title.

This chapter shall be known as the "City of Fremont Storm Water Management and Discharge Control Ordinance" and may be so cited. (Ord. No. 2012, 6-16-92.)

Sec. 8-11101. Purpose and intent.

The purpose of this chapter is to ensure the future health, safety, and general welfare of City of Fremont citizens by:

- (a) Reducing to the maximum extent practicable non-storm water discharges to the city storm drain system.
- (b) Controlling the discharge to the city storm drain system from spills, dumping or disposal of materials other than storm water.
- (c) Reducing pollutants in storm water discharges to the maximum extent practicable.

The intent of this chapter is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. §§ 1251, et. seq.). (Ord. No. 2012, 6-16-92.)

Sec. 8-11102. Definitions.

- (a) Any terms defined in the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, and/or defined in the regulations for the storm water discharge permitting program issued by the Environmental Protection Agency on November 16, 1990, (as may from time to time be amended) as used in this ordinance shall have the same meaning as in that statute or regulations. Specifically, the definition of the following terms included in that statute or regulations are hereby incorporated by reference, as now applicable or as may hereafter be amended: discharge, illicit discharge, pollutant, and storm water. These terms presently are defined as follows:
 - (1) *Discharge:* (a) Any addition of any pollutant to navigable waters from any point source; or (b) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

- (2) *Illicit discharge*: Any discharge to the city storm drain system that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.
 - (3) *Pollutant*: Dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharge into water.
 - (4) *Storm water*: Storm water runoff, snow melt runoff, and surface runoff and drainage.
- (b) When used in this chapter, the following words shall have the meanings ascribed to them in this section:
- (1) *City* shall mean the City of Fremont.
 - (2) *City Manager* shall mean the city manager of the City of Fremont.
 - (3) *Authorized enforcement officer* shall mean the city manager or his designee.
 - (4) *Best management practices (BMPs)* shall mean schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
 - (5) *City Storm Drain System* includes but is not limited to those facilities within the city by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, city streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains, which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR § 122.2.
 - (6) *Non-storm water discharge* shall mean any discharge that is not entirely composed of storm water.
 - (7) *Premises* shall mean any building, lot parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips. (Ord. No. 2012, 6-16-92.)

Sec. 8-11103. Responsibility for administration.

This chapter shall be administered for the city by the city manager. Where storm drain facilities and/or watercourses have been accepted for maintenance by the Alameda County Flood Control and Water Conservation District (ACFCWCD) or other public agency legally responsible for certain watercourses, then the responsibility for enforcing the provisions of this chapter lies with such agency with respect to those watercourses for which they have accepted maintenance. (Ord. No. 2012, 6-16-92.)

Sec. 8-11104. Taking.

The provisions of this chapter shall not operate to deprive any landowner of an economically viable use of his property or otherwise constitute an unconstitutional taking without compensation. If application of this chapter to a specific project would create an unlawful taking, the city may allow additional uses, but only to the extent necessary to avoid a taking. Such uses shall be consistent with and carry out the purposes of this ordinance as stated in section 8-11101 above. (Ord. No. 2012, 6-16-92.)

ARTICLE 2. DISCHARGE REGULATIONS AND REQUIREMENTS

§ 8-11200. Discharge of pollutants.

§ 8-11201. Exceptions to discharge prohibition.

§ 8-11203. Discharge in violation of permit; liability for violation.

§ 8-11204. Illicit discharge and illicit connections.

§ 8-11205. Reduction of pollutants in storm water.

§ 8-11206. Development Design Requirements.

§ 8-11206Z. Watercourse protection.

Sec. 8-11200. Discharge of pollutants.

The discharge of non-storm water discharges to the city storm sewer system is prohibited. All discharges of material other than storm water must be in compliance with NPDES permit No. CA0029831, issued by the California Regional Water Quality Control Board, San Francisco Bay Region, Order No. 91-146, on October 16, 1991, and any subsequent permit issued for the discharge on file with the city clerk of the City of Fremont. (Ord. No. 2012, 6-16-92.)

Sec. 8-11201. Exceptions to discharge prohibition.

The following discharges are exempt from the prohibition set forth in § 8-11200 above.

- (a) Any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit issued to the discharger and administered by the State of California under authority of the United States Environmental Protection Agency is permissible, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.
- (b) Discharges from the following activities are permissible when properly managed: water line flushing and other discharges from potable water sources; landscape irrigation and lawn watering; irrigation water; diverted stream flows; rising ground waters; ground water infiltration into separate storm drains; uncontaminated pumped ground water; foundation and footing drains; water from crawl space pumps; air conditioning condensation; springs; individual residential car washings; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; and flows from fire fighting. (Ord. No. 2012, 6-16-92.)

Sec. 8-11203. Discharge in violation of permit; liability for violation.

Any discharge that would result in or contribute to a violation of NPDES Permit No. CA0029831 (on file with the city clerk of the City of Fremont and more particularly referenced in Section 8-11200 hereof) and any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is prohibited.

Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the city in any administrative or judicial enforcement action relating to such discharge. (Ord. No. 2012, 6-16-92.)

Sec. 8-11204. Illicit discharge and illicit connections.

It is prohibited to establish, use, maintain, or continue illicit drainage connections to the city storm drain system, and to commence or continue any illicit discharges to the city storm drain system. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection. (Ord. No. 2012, 6-16-92.)

Sec. 8-11205. Reduction of pollutants in storm water.

Any person engaged in activities which may result in pollutants entering the city storm drain system shall undertake all practicable measures to reduce such pollutants. Examples of such activities include ownership and use of facilities which may be a source of pollutants such as parking lots, gasoline stations, industrial facilities, commercial facilities, stores fronting city streets, etc. The following minimal requirements shall apply:

- (a) *Littering*: No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the city, so that the same might be or become a pollutant, except in refuse containers or in lawfully established waste disposal facilities. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the city of Fremont in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage. No person shall throw or deposit litter in any fountain, pond, lake, stream or any other body of water in a park or elsewhere within the city. Notwithstanding any other provision of this section, the city manager may authorize the disposal of organic or nonorganic waste as permitted by general law.
- (b) *Standard for parking lots and similar structures*. Persons owning or operating a parking lot, gas station pavement or similar structures having impermeable surfaces, shall clean such structures as frequently and

thoroughly as practicable in a manner that does not result in discharge of pollutants to the city storm drain system.

~~(c) Best management practices for new developments and redevelopments; city manager regulations. Any construction contractor performing work in the city shall endeavor, whenever possible, to provide permissible manual or other accepted local erosion control measures at the catch basin to retain any debris and dirt flowing into the city's storm drain system. The city manager may adopt regulations establishing controls on the volume and rate of storm water runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants.~~

~~(d) (c) Notification of intent and compliance with general permits.~~ Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general storm water permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the ~~California Regional Water Quality Control Board, San Francisco Bay Region~~ San Francisco Bay Regional Water Quality Control Board, shall provide notice of intent, comply with, and undertake all ~~other~~ activities required by any general storm water permit applicable to such discharges. Each discharger identified in an individual NPDES permit relating to storm water discharges shall comply with and undertake all activities required by such permit.

~~(e) (d) Compliance with best management practices.~~ Where best management practices guidelines or requirements have been adopted by any ~~F~~federal, State of California, regional, and/or City of Fremont governments, for any activity, operation, or facility which may cause or contribute to storm water pollution or contamination, illicit discharges, and/or discharge of non-storm water to the storm water system, every person undertaking such activity or operation, or owning or operating such facility, shall comply with such guidelines or requirements as may be prescribed by the city manager. (Ord. No. 2012, 6-16-92.)

Sec 8-11206 Development Design Requirements

New and in-fill redevelopment projects shall incorporate stormwater treatment measures and site design techniques to minimize stormwater runoff pollution. New and in-fill redevelopment projects shall conform to the following:

- (a) Best Management Practices (BMP's) for new developments and in-fill redevelopment projects; Any construction contractor performing work in the city shall implement erosion control measures on site to retain all debris, dirt and pollutants, and prevent said pollutants from flowing into the city's storm drain system. The city manager or designee may adopt regulations establishing controls on the volume and rate of storm water runoff from new developments and in-fill redevelopment projects as appropriate to minimize the discharge and transport of pollutants.
- (b) Impervious areas. Parking lots and other impervious areas shall be designed to drain stormwater runoff to vegetated draining swales, filter strips, landscaping or other approved treatment devices prior to the discharge into the storm drain systems.
- (c) Operation and Maintenance Agreements. All projects incorporating post-construction stormwater treatment controls (e.g. vegetated swales, filter strips, detention ponds etc.) shall develop, execute and record an operation and maintenance plan for each type of control measures or devices that outlines specific maintenance activities, including vector control, required for optimal performance of said post-construction stormwater treatment control. The Operation and Maintenance Agreement is a legal document and is recorded on the title of the property. Responsibility for the Operation and Maintenance Agreement shall be legally transferred to all subsequent property owners.
- (d) Pedestrian Networks. The use of alternative materials for on-site walkways such as pervious concrete, decomposed granite etc. rather than conventional walkways shall be encouraged for pedestrian networks.
- (e) Rooftop runoff. Runoff areas shall drain through disconnected roof leaders and / or front yard bubblers that discharge to landscaped, vegetated or other runoff treatment areas and are properly located to prevent erosion of landscaped materials.
- (f) Surfacing. Off-street parking, loading and driveway areas shall be paved with asphalt, Portland cement, or permeable material, and except for single-family and two-family developments on individual lots, shall be bounded by concrete curb six inches in height. The area shall be graded and drained to dispose of all surface water accumulated within the area. Guidance regarding to where surface water shall drain may be found in the City of Fremont Urban Runoff Standard Conditions of Approval. Directly connected impervious surfaces shall be minimized.

- (g) Hydrograph Modification Management Plan (HMP) – Post construction flow shall not exceed pre-development discharge, as required by the NPDES permit and to the extent practicable.
- (h) Stenciling: All storm drain inlets are to be stenciled "No Dumping - Drains to Bay" using thermoplastic stencils purchased from the City of Fremont Maintenance Division. Alternative inlet stencils or marking may be permitted, subject to City Engineer approval during plan check review.

Sec. 8-112067. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for said maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the city manager:

- (a) Discharge into or connect any pipe or channel to a watercourse;
- (b) Modify the natural flow of water in a watercourse;
- (c) Carry out development within thirty feet of the center line of any creek or twenty feet of the top of a bank, whichever is greater;
- (d) Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;
- (e) Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
- (f) Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by storm waters passing through such watercourse.

The city manager may adopt regulations to clarify and implement the requirements of this section. (Ord. No. 2012, 6-16-92.)

ARTICLE 3. INSPECTION AND ENFORCEMENT

- § 8-11300. Reserved.
- § 8-11301. Authority to inspect.
- § 8-11302. Authority to sample and establish sampling devices.
- § 8-11303. Personal duty for training and procedures; notification of spills.
- § 8-11304. Authorization to test or monitor.
- § 8-11305. Violations constituting misdemeanors; alternative charge as infraction.
- § 8-11306. Penalty for violation.
- § 8-11307. Continuing violation.
- § 8-11308. Concealment.
- § 8-11309. Acts potentially resulting in violation of Federal Clean Water Act and/or Porter-Cologne Act.
- § 8-11310. Violations deemed a public nuisance; use of administrative hearings.
- § 8-11311. Notice to abate violation.
- § 8-11312. Summary abatement; imminent danger.
- § 8-11313. Abatement by city.
- § 8-11314. Appeal procedures; administrative hearing.
- § 8-11315. Service of notice of hearing.
- § 8-11316. Waiver of hearing.
- § 8-11317. Administrative hearing by hearing officer.
- § 8-11318. Voluntary abatement; avoidance of costs.
- § 8-11319. Judicial review.
- § 8-11320. Abatement by authorized enforcement officer upon failure of owner to abate.
- § 8-11321. Notice and hearing of cost report.

- § 8-11322. Hearing on cost report; finality of decision.
- § 8-11323. Assessment of cost of abatement; lien.
- § 8-11324. Notice of lien; manner of collection.
- § 8-11325. Special circumstances.
- § 8-11326. Costs and attorney's fees recovery.
- § 8-11327. Civil actions.
- § 8-11328. Administrative enforcement powers.
- § 8-11329. Costs and attorney fees a debt.
- § 8-11330. Authority to arrest or issue citations.
- § 8-11331. Remedies not exclusive.
- § 8-11332. Disclaimer of liability.

Sec. 8-11300. Reserved.

Sec. 8-11301. Authority to inspect.

- (a) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever any authorized enforcement officer has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the authorized enforcement officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter; provided that: (1) if such building or premises be occupied, he shall first present proper credentials and request entry; and (2) if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
- (b) *Consent; search warrant:* Any request for entry by the authorized enforcement officer shall include a statement that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate except as permitted for emergency or open space inspections. In the event the owner and/or occupant refuses entry after such request has been made, the authorized enforcement official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- (c) *Emergency inspections:* In any circumstance where there appears an immediate threat to the public health or safety, any authorized enforcement officer may enter any structure or premises without the consent of any person or court process.
- (d) *Open space inspections:* In any circumstances when it is necessary for the purposes of investigating or enforcing the provisions of this chapter, any authorized enforcement officer may enter open space areas without forcing entry. Said officer may enter such premises at any time to inspect the same, or to perform any duty imposed by law.
- (e) Routine or area inspections shall be based upon such reasonable selection processes consistent with general law as may be deemed necessary to carry out the objectives of this ordinance, including but not limited to random sampling and/or sampling in areas with evidence of storm water contamination, illicit discharges, discharge of non-storm water to the storm water system, or similar factors. (Ord. No. 2012, 6-16-92.)

Sec. 8-11302. Authority to sample and establish sampling devices.

- (a) With the consent of the owner or occupant or pursuant to a search warrant, any authorized enforcement officer may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the officer may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities onsite.
- (b) Emergency or open space inspections and samplings may be conducted by any authorized enforcement officer without the consent of the owner or occupant and without a search warrant. (Ord. No. 2012, 6-16-92.)

Sec. 8-11303. Personal duty for training and procedures; notification of spills.

- (a) All persons in charge of a facility or responsible for emergency response for a facility have a personal responsibility to train facility personnel and maintain notification procedures to assure immediate notification is provided to city of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the city storm drain system.
- (b) As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge, or reason to know, of any suspected, confirmed or unconfirmed release of materials, pollutants or waste which may result in pollutants or non-storm water discharges entering the city storm drain system, such person shall immediately take all necessary steps to ensure the discovery, containment and clean up of such release and shall immediately notify the city of the occurrence by telephoning (510) 745-2700 and confirming the notification by correspondence to City Manager, City of Fremont, 39100 Liberty Street, Fremont, CA 94538. (Ord. No. 2012, 6-16-92.)

Sec. 8-11304. Authorization to test or monitor.

- (a) Whenever there is reasonable cause to believe that any facility is discharging pollutants or non-storm water discharges into the city storm drain system, any authorized enforcement officer is authorized to order testing or monitoring to confirm the unlawful discharge.
- (b) Any authorized enforcement officer may order any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution or contamination, illicit discharges, and/or discharge of non-storm water to the storm water system, undertake such monitoring activities and/or analyses and furnish such reports as the officer may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports ordered.
- (c) In the event the owner or operator of a facility subject to a testing or monitoring order fails to conduct required monitoring, analyses and reports in the form required, the authorized enforcement officer may cause such testing, monitoring and analyses to be performed and the cost therefore, including the reasonable additional administrative costs incurred by city shall be the obligation of the owner or operator and may be recovered as provided in this chapter. (Ord. No. 2012, 6-16-92.)

Sec. 8-11305. Violations constituting misdemeanors; alternative charge as infraction.

Unless otherwise specified by ordinance, the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor. Notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter may, in the discretion of the authorized enforcement officer, be charged and prosecuted as an infraction. (Ord. No. 2012, 6-16-92.)

Sec. 8-11306. Penalty for violation.

- (a) Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901.
- (b) Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. (Ord. No. 2012, 6-16-92.)

Sec. 8-11307. Continuing violation.

Unless otherwise provided, a person, firm, corporation, or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation, or organization and shall be punishable accordingly as herein provided. (Ord. No. 2012, 6-16-92.)

Sec. 8-11308. Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision. (Ord. No. 2012, 6-16-92.)

Sec. 8-11309. Acts potentially resulting in violation of Federal Clean Water Act and/or Porter-Cologne Act.

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the Federal Clean Water Act and/or Porter--Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalty. Any enforcement action authorized under this article should also include notice to the violator of such potential liability. (Ord. No. 2012, 6-16-92.)

Sec. 8-11310. Violations deemed a public nuisance; use of administrative hearings.

In addition to the civil and criminal remedies and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this chapter or orders of the authorized enforcement officer, is declared a threat to the public health, safety and welfare of the City of Fremont, and is declared and deemed a nuisance and may be abated by any authorized enforcement officer using the administrative notice and hearing procedures and remedies provided in this chapter. (Ord. No. 2012, 6-16-92.)

Sec. 8-11311. Notice to abate violation.

Whenever the authorized enforcement officer determines there exists in the city a nuisance in violation of this chapter, he may:

- (a) Send or hand deliver a written notice to abate the nuisance to the owner and operator in the manner and in the form as prescribed in this chapter.
- (b) The notice shall state the proper street address and the assessor's parcel number of the subject property.
- (c) The owner shall be provided thirty calendar days to take corrective action to remedy the nuisance except in exigent circumstances when a shorter notice may be prescribed by the authorized enforcement officer.
- (d) The notice shall specify the Fremont Municipal Code section or statute violated and state all the facts constituting the nuisance.
- (e) The notice shall specify the corrective action required, including temporary corrective actions when appropriate.
- (f) The notice shall advise the property owner that failure to correct the nuisance will result in the city's abating the nuisance and collecting the charges by billing or by lien on the property.
- (g) The notice shall advise the property owner and operator that only one notice every two years will be provided for recurring nuisances.
- (h) The notice shall advise the owner and operator of the right to appeal the existence of the alleged nuisance pursuant to section 8-11314 within seven calendar days if the owner seeks to challenge the existence of the nuisance.
- (i) The notice shall advise the owner and operator he must either correct the nuisance or request a hearing in order to avoid city abatement and liability for costs of abatement.
- (j) The authorized enforcement officer may, as necessary, cause at least one copy of the notice bearing title letters at least one inch high reading "NOTICE TO ABATE NUISANCE" to be conspicuously posted on the property for thirty calendar days beginning the date written notice is given to the owner.
- (k) The notice shall advise the owner and operator that failure to appeal shall constitute a waiver of the right to administrative hearing to contest the existence of the nuisance. (Ord. No. 2012, 6-16-92.)

Sec. 8-11312. Summary abatement; imminent danger.

- (a) Any nuisance which the authorized enforcement officer determines is imminently dangerous to the life, limb, health, or safety of the occupants of the property or to the public in general may be summarily abated in accordance with the procedures set forth in subsection (d) of this section.
- (b) Actions taken to abate imminently dangerous property nuisances may include but are not limited to correction or removal of the condition creating the danger and/or the restriction from use of the property on which the dangerous condition exists or any other abatement action determined by the authorized enforcement officer to be necessary.
- (c) Summary abatement actions taken by the authorized enforcement officer shall be fully documented prior to or contemporaneously with abatement. Documentation shall include photograph and/or drawings of the condition and a written statement by the authorized enforcement officer or other first hand witnesses as to the circumstance, condition, or occurrence constituting the nuisance.
- (d) Whenever the authorized enforcement officer determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the authorized enforcement officer shall give immediate

written notice to the property owner and personal notice to the occupant of the premises as to the nuisance. If the property owner fails to take prompt appropriate action to abate the nuisance the authorized enforcement officer may proceed to take abatement action authorized in this chapter to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing.

- (e) Once summary abatement action has been completed, the property owner may contest the need for and cost of abatement action in the manner provided in sections 8-11321 and 8-11322 within seven calendar days after service of the cost report. (Ord. No. 2012, 6-16-92.)

Sec. 8-11313. Abatement by city.

- (a) In the event the property owner fails to abate within the prescribed time, and if no appeal has been filed with the city manager, the authorized enforcement officer shall abate the nuisance.
- (b) Abatement shall be pursued by city personnel or private contractor retained by the city. The authorized enforcement officer or designee is hereby expressly authorized to enter upon said property for such purposes, to the extent permitted by law, and is authorized to obtain such court process as may be necessary to gain lawful entry.
- (c) The actual costs of abatement, including administrative and incidental expenses, shall be the liability of the owner. "Incidental expenses" shall include but are not limited to personnel costs, both direct and indirect, costs incurred in inspecting the property, in documenting the nuisance, the actual expenses to the city in the preparation of notices, preparation of specification and contracts for abatement and inspection of the work, and the costs of printing and mailing required hereunder, and legal expenses as provided in section 8-11326. (Ord. No. 2012, 6-16-92.)

Sec. 8-11314. Appeal procedure; administrative hearing.

The property owner may appeal the nuisance determination of the authorized enforcement officer to the city manager by filing an appeal with the city clerk within seven calendar days of the date of service of the notice to abate. The appeal shall identify the property and state the grounds for appeal together with all material facts in support thereof. (Ord. No. 2012, 6-16-92.)

Sec. 8-11315. Service of notice of hearing.

- (a) In the event the property owner appeals the nuisance determination, the city manager shall schedule an administrative hearing within five days of receiving said appeal before a hearing officer designated by the city manager.
- (b) Notice of said hearing shall be served personally or by first-class mail, postage prepaid. Such notice shall be addressed to the person in possession of such property as shown in the records of the authorized enforcement officer, and to the owner thereof at the last known address as the same appears on the last equalized-assessment roll of the county and shall specify the time and place when and where the designated hearing officer will hear and decide upon issues which may be raised by the owner. Such notice shall be served not less than five days, exclusive of Saturdays, Sundays, and holidays, prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail. (Ord. No. 2012, 6-16-92.)

Sec. 8-11316. Waiver of hearing.

Failure of the owner to appear at the hearing after notice has been served personally or by first-class mail, postage prepaid, addressed to said owner at the address shown on the appeal shall be deemed a waiver of the hearing and an admission by said owner of the nuisance charged. In the event of such failure to appear, the city manager may order that the nuisance be abated by the authorized enforcement officer or his designee. (Ord. No. 2012, 6-16-92.)

Sec. 8-11317. Administrative hearing by hearing officer.

- (a) At the time and place set for hearing, the hearing officer designated by the city manager shall afford the appellant an opportunity for a hearing and shall consider all relevant evidence, and shall receive testimony from the authorized enforcement officer or his designee and the property owner under oath relative to such alleged nuisance and the proposed abatement of such nuisance. Each party may examine the witnesses of other parties.

- (b) Said hearing shall be tape recorded and may be continued from time to time at the discretion of the hearing officer.
- (c) The hearing officer shall prepare a written decision based on the evidence received which shall be final and conclusive. The written decision shall contain a statement of decision relevant to the issues presented and set forth the time within which abatement shall be completed by the owner. In no event shall said abatement period be less than thirty days (except in exigent circumstances) nor more than sixty days, except with a showing of good cause.
- (d) The hearing officer shall complete and deliver the written decision to the city manager within five days after the close of hearing.
- (e) The city manager shall serve the written decision on the parties no later than five days after the decision is delivered by the hearing officer and shall be served in the same manner as the notice to abate nuisance as prescribed in section 8-11311.
- (f) The hearing officer shall compile and retain for one hundred twenty days the full record of the hearing under this chapter, including all exhibits and documents offered as evidence, whether or not admitted, and an audio tape recording of the proceeding. (Ord. No. 2012, 6-16-92.)

Sec. 8-11318. Voluntary abatement; avoidance of costs.

No administrative or incidental staff costs associated with the hearing or enforcement may be assessed against an owner who undertakes abatement action within ten calendar days after service by the city manager of the written decision on the owner. The owner's abatement action shall be in compliance with the orders of the hearing officer. (Ord. No. 2012, 6-16-92.)

Sec. 8-11319. Judicial review.

Review of hearing officer decisions pursuant to this chapter shall be in accordance with CCP 1094.5. (Ord. No. 2012, 6-16-92.)

Sec. 8-11320. Abatement by authorized enforcement officer upon failure of owner to abate.

After said hearing, if abatement of the nuisance has not been commenced and prosecuted to completion with due diligence as required by the written hearing decision, the authorized enforcement officer shall forthwith abate or cause to be abated the nuisance upon the premises and the cost thereof shall be billed to the property owner. (Ord. No. 2012, 6-16-92.)

Sec. 8-11321. Notice and hearing of cost report.

- (a) The authorized enforcement officer shall file with the city manager a cost report specifying the work completed, the cost of abatement, including incidental expenses, and a description of the property subject to abatement. The cost report shall be filed within ten calendar days of completion of the abatement.
- (b) At the time of filing the cost report with the city manager, the authorized enforcement officer shall cause notice of the cost report to be given in the manner specified in section 8-11311 of this article, which notice shall specify the time and place when and where a city hearing officer will hear and pass upon the cost report.
- (c) The property owner may appear and be heard concerning the cost of abatement and may examine the authorized enforcement officer and any person responsible for the abatement of the nuisance. (Ord. No. 2012, 6-16-92.)

Sec. 8-11322. Hearing on cost report; finality of decision.

- (a) At the time and place fixed for the hearing of the cost report, the hearing officer shall hear and pass upon the cost report in the manner provided in section 8-11317 hereof. The hearing officer shall receive objections and protests of the owner liable to be assessed for such abatement costs. The hearing officer may continue the hearing from time to time in his discretion.
- (b) The hearing officer may make such revision, correction, or modification in the cost report as he may deems just, after which the cost report as revised or modified, shall be confirmed in writing by the hearing officer. The hearing officer shall deliver the written confirmation of the cost report to the city manager within five days after the close of the hearing on the cost report.

- (c) The city manager shall serve the confirmed cost report on the property owner in the same manner as provided in section 8-1311 no later than five days after receiving the confirmed cost report. The city manager shall inform the property owner that the cost report will become a lien on the subject property unless paid within thirty days after confirmation by the hearing officer.
- (d) If the hearing officer determines that the objections and protests support a finding that the nuisance was not created, or allowed to continue by the owner or a person or entity holding an estate under the owner, he shall make such finding and may revise, correct, or modify the cost report of the authorized enforcement officer as justice may require.
- (e) The decision on all protests and objections which may be made shall be final and conclusive and subject to review pursuant to Code of Civil Procedure § 1094.5
- (f) The hearing officer shall prepare and preserve a full record of the proceeding, including an audio tape, for one hundred twenty days after the close of the hearing. (Ord. No. 2012, 6-16-92.)

Sec. 8-11323. Assessment of cost of abatement; lien.

The cost of abatement shall be assessed by the city against the property upon which the nuisance was abated and such cost so assessed, if not paid within thirty days after its confirmation by the hearing officer, shall constitute a special assessment against the parcel of property and shall be a lien on such property for the amount thereof from the time of recordation of the notice of lien, which lien shall continue until the assessment is paid or until it is discharged of record. (Ord. No. 2012, 6-16-92.)

Sec. 8-11324. Notice of lien; manner of collection.

- (a) From and after the date of the recording of the notice of lien, all persons shall be deemed to have notice of the contents thereof. The notice of lien shall be delivered by the city finance director to the county auditor, who shall enter the amount thereof on the county assessment book opposite the description of the particular property. The amount of the lien shall be collected together with all other taxes thereon against the property.
- (b) The notice of lien shall be delivered to the county auditor before the date fixed by law for the delivery of the assessment roll to the county board of equalization. Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in the case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are hereby made applicable to such special assessment taxes. (Ord. No. 2012, 6-16-92.)

Sec. 8-11325. Special circumstances.

- (a) Notwithstanding any other provision herein, whenever an owner of property constituting a nuisance is unable to abate the nuisance and is also unable to pay for the cost of abatement by the city, the city shall abate the nuisance. The cost of abatement shall become a lien against the property, which lien comes due and payable only upon the sale, transfer, or total or partial destruction of said property.
- (b) This procedure shall be available as an alternative provision whenever the owner can prove to the satisfaction of the authorized enforcement officer that said owner is unable to abate the nuisance or to pay for the cost of abatement due to the following circumstances:
 - (1) Continued unemployment, underemployment, or low income.
 - (2) Physical or mental disability, disease, handicap, or impairment rendering owner unable to meet its civic and financial obligations.
 - (3) Senior citizens subsisting on a limited, fixed, low income.
- (c) The authorized enforcement officer shall advise all property owners of the availability of this procedure at the time of giving notice of nuisance as provided in section 8-1311 hereof. (Ord. No. 2012, 6-16-92.)

Sec. 8-11326. Costs and attorney's fees recovery.

In any administrative or civil proceeding under this chapter in which the city prevails, the city shall be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit, and reasonable attorney fees. All such costs shall be deemed costs of nuisance abatement and shall be included in the cost report provided in this chapter. (Ord. No. 2012, 6-16-92.)

Sec. 8-11327. Civil actions.

In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- (a) A temporary and/or permanent injunction.
- (b) Assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.
- (c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
- (d) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the city to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this ordinance.
- (e) An award of reasonable attorney fees in any action in which the city prevails. (Ord. No. 2012, 6-16-92.)

Sec. 8-11328. Administrative enforcement powers.

In addition to the other enforcement powers and remedies established by this ordinance, any authorized enforcement officer has the authority to utilize the following administrative remedies:

- (a) *Cease and desist orders*: When an authorized enforcement officer finds that a discharge has taken place or is likely to take place in violation of this chapter, the official may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (1) comply with the requirement, (2) comply with a time schedule for compliance, and/or (3) take appropriate remedial or preventive action to prevent the violation from recurring.
- (b) *Notice to clean; abatement procedures*: Whenever an authorized enforcement officer finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the city storm sewer system or a non-storm water discharge to the city storm sewer system, he may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in the manner prescribed by Section 8-1311 of this chapter. The recipient of such notice shall undertake the activities as described in the notice. (Ord. No. 2012, 6-16-92.)

Sec. 8-11329. Costs and attorney fees a debt.

All costs and attorney fees imposed pursuant to the provisions of this chapter shall be deemed a debt to the city. At the discretion of the city manager, an action may be commenced in the name of the city in any court of competent jurisdiction for the amount of such debt. The time for commencement of any such action shall be within three years from the date of the award imposed pursuant to the provisions of this chapter. (Ord. No. 2012, 6-16-92.)

Sec. 8-11330. Authority to arrest or issue citations.

- (a) Authorized enforcement officers shall have and are hereby vested with the authority to arrest or cite and release any person who violates any section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or infractions.
- (b) Such authorized enforcement officers may issue a citation and notice to appear in the manner prescribed by Penal Code §§ 853.5 and 853.6.
- (c) It is the intent of the city council that the immunities prescribed in § 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter. (Ord. No. 2012, 6-16-92.)

Sec. 8-11331. Remedies not exclusive.

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Ord. No. 2012, 6-16-92.)

Sec. 8-11332. Disclaimer of liability.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the part of the city, any officer or employee thereof, for any damages that result from reliance with this chapter or any administrative decision lawfully made there under. (Ord. No. 2012, 6-16-92.)

ARTICLE 4. COORDINATION WITH OTHER PROGRAMS

§ 8-11400. Coordination with hazardous materials inventory and response program.

§ 8-11401. Severability and validity.

§ 8-11402. Construction and application.

Sec. 8-11400. Coordination with hazardous materials inventory and response program.

The first revision of the business plan for any facility subject to the city's hazardous materials inventory and response program shall include a program for compliance with this chapter, including the prohibitions on non-storm water discharges and illicit discharges, and the requirement to reduce storm water pollutants to the maximum extent practicable. (Ord. No. 2012, 6-16-92.)

Sec. 8-11401. Severability and validity.

If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council of this city hereby declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portion should be declared invalid or unconstitutional. (Ord. No. 2012, 6-16-92.)

Sec. 8-11402. Construction and application.

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit No. CA0029831 (on file with the city clerk of the City of Fremont and more particularly referenced in Section 8-11200 hereof) and any amendment, revision or reissuance thereof. (Ord. No. 2012, 6-16-92.)